



## STATEMENT

Senate Committee on Homeland Security and Emerging Technologies  
March 3, 2009

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### The MCOLES Initiative on Regular Employment

Public Act 203 of 1965, as amended, defines a "police officer" or a "law enforcement officer" as a "regularly employed" member of a law enforcement agency, authorized and established pursuant to law, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state.

Since the early 1970s, questions have been raised periodically concerning the meaning of the terminology, "**regularly employed.**" Some of the most frequent inquiries on this subject have come from law enforcement employers. The legitimate use of part-time officers has become integral to the provision of police protection by many Michigan communities. Periodically, these employers have asked for clear guidelines by which they can establish and maintain licensed part-time officers.

In attempting to answer these questions, MCOLES has relied on precedent law and attorney general opinions in dispensing advice. This methodology has met with limited success. Despite these efforts, it would be fair to state that there are law enforcement officers in Michigan who, arguably, are not regularly employed.

### Legal Background on Regular Employment

It is significant to note that the regular employment requirement contained in Public Act 203 of 1965 forms the linkage between the application of law enforcement authority and supervision of law enforcement activities by way of an employer-employee relationship. This relationship is anything but casual.

The "regular employment" requirement of PA 203 is recognized in law as meaning something greater than a sporadic, intermittent, or a casual working relationship. Three opinions have been published by the Michigan Attorney General discussing "regular employment" under PA 203.

- In 1973, the Michigan Attorney General found that in order for constables to carry firearms under recognition as fully-empowered law enforcement officers, their work as officers must be "**substantial rather than merely occasional.**"
- In 1978 the Attorney General determined that "**regularly employed**" law enforcement officers do not include members of a Sheriff's posse, or auxiliary officers that are available for duty on merely an "ad hoc" or temporary basis.

- A 2002 Attorney General opinion declared that meeting the **“regular employment” requirement of PA 203 requires showing that substantial work constitutes a large part of an officer’s daily activity as a paid employee.**

Other recognized areas of employment law support the Attorney General Opinions. Under the Fair Labor Standards Act (FLSA), a person may be considered a compensated **“volunteer”** exempted from minimum wage requirements if they are employed on only an **“occasional or sporadic”** basis. The FLSA defines “occasional or sporadic” as infrequent, irregular, or occurring in scattered instances.

Regular employment in Worker’s Compensation matters entails a threshold of near full-time hours worked, for a period of 13 weeks or longer, during a calendar year. **Courts have denied benefits to some substitute teachers where an employment relationship is “casual and temporary in nature” as shown by irregular work arrangements where employees are under no commitment to teach from one day to the next.**

**It is clear that MCOLES has a legal duty to ensure that Michigan law enforcement officers are regularly employed.** Michigan Attorney General Opinions, as well as supporting law, clearly establish that sporadic, temporary, or casual work arrangements do not fall within the sphere of regular employment.

### **Chronology of MCOLES Efforts on Regular Employment<sup>1</sup>**

There has been long standing recognition that the Commission’s position with regard to regular employment needs to be strengthened. In recognition of this problem, the predecessor organization to MCOLES, the Michigan Law Enforcement Officers Training Council (MLEOTC), attempted during the 1980s to define regular employment as 1040 hours of work within a 365 day period. This effort was not well received by the field and was ultimately unsuccessful.

Absent clear parameters from MCOLES, some interpretations of the regular employment requirement have originated in the field. A few of these have lead to the practices that obviously were designed to circumvent the legislative intent in Public Act 203. For example, former law enforcement officers were employed at the rate of one dollar per year to work one day per year in order to retain a license to practice law enforcement in this state. In some instances, individuals have sought part-time employment as law enforcement officers to further personal gain through the exercise of law enforcement privileges or powers.

Despite the need to prevent these obvious abuses, the more important purpose and the inherent wisdom contained in Public Act 203 points to the necessity for continuing experience. Law enforcement officers, unlike other professionals, have the broad responsibility of doing whatever is necessary to protect public safety. Often, there is no

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<sup>1</sup> For further detail on the evolution of the Regular Employment issue, please refer to the attached document, “520 Hour Regular Employment Standard Chronology.”

textbook response that will apply in a particular situation. Consequently, officers must draw upon their knowledge and experience in crafting solutions to problems they face on a daily basis. In so doing, it has repeatedly been demonstrated that knowledge and experience apart from one another are incomplete in equipping officers to meet these challenges. This observation is overwhelmingly supported by cognitive research. **It is absolutely essential that knowledge gained through training is tempered by (arguably recent) experience in the field. This will not only enhance the ability of law enforcement to protect the public, it is a key component of officer safety and survival.**

In 1998, Public Act 537 amended Public Act 203 of 1965 to require employment tracking, by MCOLES, of those who practice law enforcement in Michigan. Subsequent efforts in implementing this responsibility revealed that significant numbers of part time law enforcement personnel were working minimal hours, which were beyond any reasonable interpretation of being regularly employed. In 2001, the office of the Michigan Attorney General encouraged the Commission to move forward in defining regular employment in order to provide clear guidance to Michigan's law enforcement community.

Recognizing the difficulty and significance of this challenge, the Commission adopted the development of a regular employment standard as one of its strategic initiatives in 2004. This initiative was published to the field and announced in numerous presentations before law enforcement administrators and professional groups.

Continued examination of employment tracking data continued into 2006, when the Commission appointed an ad hoc Committee on Regular Employment to study options for a regular employment standard. The committee, chaired by Genesee County Sheriff Robert Pickell, conducted its initial meeting on October 23, 2006 in Detroit. In order to gain an accurate perspective, the committee examined the legal history surrounding this issue, known facts concerning the extent of part-time law enforcement employment in Michigan, and the number and size of agencies that employ part-time law enforcement officers. Prior input from insurance providers was also taken into account. To gain perspective on unanswered questions, the committee surveyed the law enforcement field in Michigan at the close of 2006.

In 2007, MCOLES conducted two series of stakeholder meetings across the state to address the regular employment issue. The January meetings, designed to receive input on regular employment issues, were conducted at the dates and locations indicated below.

January 8, 2007	Auburn Hills
January 10, 2007	Escanaba
January 11, 2007	Gaylord
January 12, 2007	Lansing
January 31, 2007	Grand Rapids

In summary, the overall public response to the Commission's regular employment initiative was positive. The hearings afforded Commissioners and staff the opportunity to present this initiative to the field and to interact on a person to person basis. Concerns were expressed by smaller law enforcement employers regarding the potential effect that a standard based on hours worked might have on their agency operations. There was, however, broad recognition of the need for a standard and the difficulty associated with creating one. There was an overall expression of confidence in the Commission's ability to produce a workable solution.

During the summer and fall of 2007, the Commission's Regular Employment Committee developed recommendations for a regular employment standard, and as promised to the field, MCOLES representatives conducted the additional stakeholder sessions in November and December of 2007. Again, there was broad based support for the Commission's initiative, yet there was continuing concern expressed among smaller law enforcement employers, particularly among those located in southern Michigan, regarding the potential effect that a standard based on hours worked might have on their agency. These additional sessions were held on the dates and at the locations listed below.

November 30, 2007	Kentwood
December 3, 2007	Auburn Hills
December 5, 2007	Marquette
December 6, 2007	Gaylord
December 7, 2007	Lansing

### Conclusion

Ultimately, the Commission had to make what would be among the most difficult decisions ever faced by this body. In defining regular employment, the Commission has attempted to identify a standard that strikes a balance between the needs of individual agencies and the legal requirements of PA 203.

Based in part on input received during the last series of stakeholder meetings, the Commission modified its initial proposal, which was based on 565 hours of annual work. At its April 2008 meeting, the Commission adopted 520 hours of annual work as its standard for regular employment. Taking into account potential difficulties that agencies anticipated in achieving this standard, as well as the challenges MCOLES would need to meet in administering this measure, the Commission delayed implementation of the standard to 2012.

Presently, we are engaged in a work effort with representatives from agencies that have concerns regarding the 520 hour regular employment standard. In order to accommodate their stated needs, the Commission anticipates development of a liberal remediation process for officers who do not meet the 520 hour standard in 2012 or thereafter.